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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,041	08/28/2003	Lester J. Clancy	1294	4926

7590

08/12/2005

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EXAMINER

DONNELLY, JEROME W

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/649,041

Applicant(s)

CLANCY, LESTER J.

Examiner

Jerome W. Donnelly

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3 and 5 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

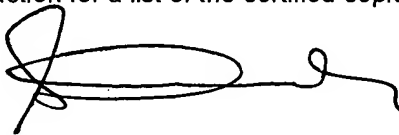
- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

JEROME W. DONNELLY  
PRIMARY EXAMINER



## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

1. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Tucker.

Tucker discloses a device comprising a pair of handles having first and second ends, said ends being symmetrically aligned, weight balls (E) and a donut-shaped enclosure comprising outer wall (B) and inner wall (D) and a flexible stretching member (G) attached to an end of said handle through attachment member (F).

As to the device of claim 1 comprising two members, the examiner notes that applicants and the prior art component are not attach and that it is obvious find at least two of the prior art component being placed in close proximity to one another.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aragon Jr. in vie of Yungk.

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Aragon Jr. discloses a device comprising a handle, weight balls (22) a donut shaped enclosure having an outer wall 12 and inner wall (44), a hollow chamber (18) formed in said handle and an end cap (24).

Aragon Jr. however does not disclose his device wherein it includes a flexible member and the end cap is threaded.

As to end caps being threaded the examiner notes that to threaded end caps are known and obvious in the art.

As to the device including a flexible member, the examiner notes that the applicant has not claimed, that the member be stretchable. In view of this statement and in view of the cord member (5) of Yungk, the examiner notes that it would have been obvious to one of ordinary skill in the art to provide a handle means on the device of Aragon.

In regard to claim 1 the examiner notes that to have two of the device of Aragon in close proximity to each other would be expected and thereby meet the claim language of two handles claimed in claim 1.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tucker in view of Prueitt.

The examiner notes that to include a timer within the body/handle of Tucker would have been obvious to one of ordinary skill in the art in view of the timer disclosed in the jump rope of Prueitt.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the overall device of Yu, Christen and Orak.

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Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

JEROME W. DONNELLY  
PRIMARY EXAMINER

PRIMARY EXAMINER